IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1391 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ISMAILBHAI I SAIYAD

Appearance:

1. Criminal Appeal No. 1391 of 1993

MR MA BUKHARI Ld. APP for Petitioner No. 1

MR BK DAVE for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 19/12/2001

ORAL JUDGEMENT

1. Heard Mr. M.A.Bukhari learned APP for appellant - State of Gujarat and Mr. B.K.Dave learned advocate for the respondent.

2. This is an appeal filed by the appellant - State of Gujarat under Section 378 of the Criminal Procedure Code,1973, (for short "the Code") challenging the judgement and acquittal order of the present respondent recorded by learned J.M.F.C., Khambhat on 6.2.1993, acquitting him from offence punishable under Sections 338, 337, 279 of the I.P.C. and under Sections 112 and 116 of the Motor Vehicle Act.

3. The prosecution case before the Trial Court may be briefly stated as follows :

The original informant - Raijibhai Ramsing was travelling as pillion rider on a scooter, driven by Vijaybhai on 18.3.1989 at about 18.00 hours on Dhuvaran Khambhat Highway and at that time, the present respondent was driving a Motortruck No. GQG 7439. In fact, at the relevant point of time, the truck was in stationery condition and at the time when the aforesaid scooter driven by injured Vijaybhai was in a process of overtaking the said truck, the present respondent took the said truck in reverse direction without any signal with the result that the back portion of the truck dashed against the scooter, driven by Vijaybhai resulting in injuries to witnesses Raijibhai and Vijaybhai.

It is therefore alleged against the respondent that he drove the said truck on a public road so rashly or negligently as to endanger human life or personal safety of other. It was also alleged against him that by the aforesaid driving, the respondent caused simple / grievous hurts to the said witnesses and, therefore, committed the aforesaid offences. That Raijibhai and Vijaybhai both were taken to the Hospital for treatment. That Raijibhai filed FIR before the Khambhat Police Station. The respondent was arrested on 18.3.1989 at 20.30 hours, and he was enlarged on bail. That on receipt of the FIR, appropriate investigation was undertaken by the Police Investigating Officer, and at the conclusion of the investigation, charge sheet was filed before the learned JMFC, Khambhat which was registered as Criminal Case No.770 of 1989. The learned Magistrate supplied the copies of police investigation papers to the respondent. His plea was recorded and the respondent pleaded not guilty and, therefore, evidence was recorded. That at the conclusion of the evidence, the learned Magistrate recorded further statements of the respondent, and after hearing the arguments, the learned Magistrate found that the prosecution had failed to prove the case against the respondent. Therefore, the learned

Magistrate pronounced his judgement acquitting the respondent from the said charge.

4. Feeling aggrieved by the aforesaid judgement and acquittal order recorded by the learned Magistrate, the State of Gujarat has preferred this acquittal appeal before this court under Section 378 of the Code.

5. It has been mainly contended here that though there was sufficient evidence on record, learned Magistrate has committed serious error in acquitting the respondent. That learned Magistrate has not properly appreciated the evidence before him and, therefore, the judgement and acquittal order are illegal and erroneous, and deserve to be set aside. That therefore the present appeal be allowed, the judgement and acquittal order be set aside, the accused be held guilty for the aforesaid offences, and he may be dealt with according to law.

6. I have heard Mr. M.A.Bukhari learned APP for the appellant - State, who has taken me through the oral and documentary evidence, as well as through the reasonings and findings of the learned Magistrate recorded in his judgement. He has argued that the learned Magistrate has committed serious error in holding that there was no identity of the present respondent. In other words, his argument is that the learned Magistrate has wrongly observed that the identity of the respondent has not been established.

7. We have the evidence of Raijibhai and Vijaybhai on record. Raijibhai has been examined at Exh.19 in which he has deposed that the driver was in the cabin, and he took the truck in a reverse direction on account of which the truck had dashed against the scooter on which he was travelling as a pillion rider. There is nothing on record to show as to how this witness knew the driver. He has not stated anything about the same.

8. It would be worthwhile to refer to the FIR lodged by the witness on 18.3.1989 which has been produced before the Trial Court at Exh.20. There, he has deposed that the scooter on which he was travelling as pillion rider was in the process of overtaking the stationery truck and at that time, the truck driver, all of a sudden, took the truck in a reverse direction on account of which the truck dashed against the scooter and, therefore, injury was sustained by him as well as by Vijaybhai. It would be important to note that the witness has not given the name of the driver i.e. respondent during the course of his evidence at Exh.19.

On going through the FIR, it transpires that it does not contain the name of the respondent. This means that name of the respondent was not disclosed in the FIR, and the said name was not disclosed in the evidence of informant - Raijibhai. Morever, Raijibhai does not appear to have stated before the Trial Court that he was in a position to identify the respondent or that he had seen the respondent on that day or any other day. In that case, it would be doubtful as to how this witness could name or identify the respondent. For my satisfaction, I had called for the original record, and it was noticed that the original FIR did not contain the name of the respondent as the driver of the vehicle involved in the accident. It seems that even the further statement of the informant does not appear to have been recorded with a view to introduce the name of the respondent as the driver of the said vehicle involved in the said accident.

Then, we can turn to the evidence of another injured eye witness Shri Vijaybhai. He has stated that the driver of the truck took the truck in a reverse direction and, therefore, it dashed against the scooter. Thereafter, he has stated that he knew the driver. However, this fact does not appear to have been disclosed by him during the course of investigation. If this witness was knowing the name of the respondent at the relevant point of time, then he would have certainly conveyed the said name to the informant, and the informant, in turn, would have certainly disclosed the name of the driver in the FIR. The name of the respondent is not found in the FIR and, therefore, it can be inferred that the informant did not know the name of the driver when FIR was lodged. This would further go to show that even Vijaybhai did not know the name of the driver at the time when the FIR was filed. It is more so when, he also did not name the respondent as the driver of the said vehicle in his statement before the Police also. Thereafter, there is no test identification pared conducted by investigating agency where the witnesses may have identify the respondent. It is extremely difficult to depend upon the evidence of these two witnesses who identified the respondent in the court for the first time. It is more so when this Court is sitting as a Court of Appeal against the judgment of acquittal.

9. Even otherwise, the witness Raijibhai had deposed before the Trial Court that it was his impression that the truck was simply stationery and, there was a space on the right hand side of the truck and, therefore, Vijaybhai had tried to overtake the said truck from the right hand side and, all of a sudden, the truck was taken

in reverse direction without any signal. That Vijaybhai had blown the horn of his scooter to give indication to the driver of the said truck, and yet the driver of the said truck took the truck in reverse direction and, therefore, the truck dashed against the scooter. Now, the witnesses had been examined at length, and contradictions have been brought on record. It can be gathered that the witness has stated in the evidence that some persons were getting down from the said truck showing that the truck was stationery for sometime. The witness has stated in his cross-examination that the aforesaid fact was not disclosed by him in the FIR recorded by the police. The witness had deposed in the Court that there was none to give signal to the driver of the truck. Even that fact was not disclosed in his FIR. It is further stated in the evidence that none had given signal to the driver. It is noticed that even this fact has not been mentioned in the FIR. The witness has stated that horn was blown from some distance to give the indication to the driver that the scooter was in the process of overtaking the truck, the witness has not stated the said fact in his FIR before the police. The witness has also stated in the Court that the driver stopped the truck all of a sudden in the middle of the road. It appears that even this fact has not been disclosed by him in the FIR. Then the witness has also stated that the driver was requested to take them to the Hospital and help them. This fact was also not disclosed in the FIR. The witness has further stated that the driver got down and took the injured to the Government Hospital at Khambhat. This fact has also not been stated by him in the FIR. This shows that there are number of contractions in the evidence of this witness. This further shows that the witness has improved his version during the course of his evidence, then what was stated by him in his FIR.

Another eye witness Vijaybhai, Exh.21, is also an injured eye witness and was driving the scooter at the relevant point of time. According his evidence, the truck was on the left hand side of the road and, therefore, he felt that driver would be wanting to induct passenger in the truck. That he started to blow horn at a distance of 200 mtrs. so that he could safely overtake the said truck. That the truck was found being driven in a reverse direction all of a sudden and took right hand turn in reverse direction without any signal and, therefore, the truck dashed against the scooter. It is evident that the witness has not stated in his previous statement before the police that three to four persons were in the truck, and that he felt that truck was lying

there with a view to induct passengers. He has also not stated to the police that he had started to blow the horn from a distance of 200 mtrs. so that he could safely overtake the truck. He has also not stated to the police that the truck was taken in reverse direction all of a sudden. He has also not stated to the police that truck was taken in reverse direction on right hand side, and there was none to give signal to the driver of the truck. The witness has stated in the Court that the truck was placed in the middle of the road after taking it in reverse direction. This fact was also not stated by him before the police when his statement was recorded. Then the witness has stated in the Court that he was on the right hand side as he wanted to over take the said truck. This fact was not disclosed in his earlier statement. He has deposed in the Court that since the truck was driven in reverse direction, the road was blocked. This fact was also not disclosed by him in his statement before the Police. This means that there are number of contractions even in the evidence of this witness, and there are material contradictions of material particulars and improvement in the story which clearly indicates that the witness has also come with a new story to show the rashness or negligence on the part of the respondent. Then there is the evidence of Dr. Rameshbhai Bhailalbhai at Exh.23 who has given the evidence about the injuries suffered by the two witnesses. He has also issued the certificate of injury at Exh.24 and Exh.25. PSI Exh.27 has been examined as investigating Police Officer, who has proved the contradictions.

10. Thereafter, the prosecution wanted to examine another witnesses Bhailalbhai Maganbhai, who was examined under the permission of the Court at Exh.35. It seems that he is the owner of the truck. However, he says that he does not know whether GQG 7439 is a truck belonging to him or not. He also says that he does not know if the respondent had taken the said truck on 18.3.1989. He further says that he did not know the respondent who was present in the court. He was treated hostile and nothing fruitful is derived from his cross-examination. Even from the evidence of this witness, prosecution has not proved that the respondent was driving the truck at the relevant time. Then there is the evidence of witness Ravjibhai Desaibhai Exh.8 as a Panch witness in whose presence the Panchanama was drawn with respect to the condition of the truck. He has not supported the case of the prosecution, and he has been treated as hostile witness. At the time when Panchnama was drawn, the truck was not at a place where the accident took place. Further, the Panchnama shows that there was no damage

noticed on the body of the truck, which would again go to show that there is little possibility of a dash between the truck and the scooter. If there had been collusion between two vehicles, then some marks of damage would have been noticed on the back side of the truck. No such damage has been noticed in the Panchanama and, therefore, it is doubtful as to whether this truck was really involved in the accident in question.

11. Another witness Mansing Somabhai at Exh.10, is a Co-Panch of the previous Panchanama Exh.9. He has also been treated as hostile witness by the prosecution, and nothing has been derived from his deposition. He had denied that he knew the respondent. It appears that there is also a Panchanama at Exh.7 on record showing the scene of the offence. It seems that this Panchanama has been admitted in evidence by the consent of the parties without examination of Panch witnesses. It appears from this Panchanama that the road from Dhuravan to Khambhat is from west to east. The scooter was lying little away on the southern side, on the said road it was facing Khambhat side. It seems that the scooter was on the wrong side of the road. This may show that the driver of the scooter had tried to overtake the truck from its left hand side which would go to show that the process of overtaking was done on the wrong side of the road, and on the wrong side of the truck. The learned Magistrate has also taken this view and looking to the Panchanama Exh.7, there is a reason to accept the said finding of the learned Magistrate. That learned Magistrate was right in holding that there is no reliable evidence to hold that the present respondent was driving the vehicle in question at the time of the accident, and in absence of any evidence about the identity of the respondent as the driver of the said truck, he should be entitled to benefit of reasonable doubt since the prosecution has not proved beyond reasonable doubt that the present respondent was driving the vehicle in question at the time when accident took place. Then, on the point of negligence and rashness, the learned Magistrate appears to be right in extending the benefit of reasonable doubt to the respondents in view of the contradictory evidence of the two witnesses, and in view of the description of the scene of offence recorded in Panchanama Exh.7.

12. This is after all an appeal against the acquittal judgment and acquittal order. In this type of appeals, the Appellate Court is required to be slow and reluctant to interfere with the acquittal unless acquittal judgement is found to be perverse, and is immensely opposed to the evidence on record, as laid down in the

case of State of Gujarat Vs. Mansukhlal Lovchand Choksi reported vide 1993 (2) GLH 849.

13. It is well settled that in disposing of appeals against the acquittal judgement, proper weight is required to be given to :

(i) the views of the Trial Court as to the credibility of the witness;

(ii) the presumption of innocense of the accused;

(iii) the right of the accused to the benefit of reasonable doubt;

(iv) that the Trial Court had advantage of seeing the witnesses while tendering evidence from the witness box; and

(v) if two views are possible, the view adopted by the Trial Court need not be altered.

This can be gathered from a case Sudhirchandra B.Joshi, Food Inspector, Baroda Vs. Arvindkumar N. Patel and Anr. reported vide 1995 (2) GLH (UJ-24) 31.

14. Then, it is well settled that when the Appellate Court agrees with the logic and reasonings of the Trial Court and confirms the same, it does not require to go into the detailed and lengthy reasons. This can be gathered from reported decision of State of Gujarat Vs. Mansukhlal (supra).

In the case of Garasia Ratubha Hanubhai & Anr. Vs. State of Gujarat reported vide 1997(3) GLR 2365 (SC) in which it has been laid down that when two vies are possible, then as a matter of judicial caution, the High Court would refrain from interfering with the order of acquittal, as the Trial Court had an opportunity of seeing the demeanor of the witnesses.

15. Considering the principles as aforesaid enunciated in the above decisions; looking to the reasons recorded by the Trial Court; looking to the evidence of two eye witnesses; the contradiction with the FIR and statements before the police, considering the Panchnama Exh.7, I am of the view that the learned Magistrate cannot be said to have committed any error in holding that there was no sufficient evidence to prove the identity of the respondent as the driver of the vehicle involved in the accident, and that the evidence about the

rashness and negligence on the part of the respondent was insufficient to hold the respondent guilty for the offences. In other words, learned Magistrate was right in acquitting the respondent, and there is no reason to differ from the view adopted by the learned Magistrate.

16. The learned APP has argued at length that the evidence of the said to eye witnesses should be accepted as they are injured eye witnesses. It is not disputed fact that they are injured eye witnesses, but the description given by them with respect to the manner in which the accident is said to have taken place is not consistent. That a material improvements and contradictions which would lead to infer that they have not told the whole truth before the Court and, therefore, it is not safe to rely upon the evidence of the said two eye witnesses. Once the evidence of these two witnesses is not found to be acceptable it is not possible to hold the respondent guilty for the aforesaid offence.

17. In view of the above, there is no merit in the present appeal and the same deserves to be dismissed. Accordingly, the present appeal is ordered to be dismissed, and judgement and acquittal order recorded by the Trial Court are hereby confirmed.

(D.P.Buch,J.)
(vipul)